DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



February 23, 2001

Regulation Package #0800-17

CDSS MANUAL LETTER NO. EAS-01-01

TO: HOLDERS OF THE EAS MANUAL, DIVISIONS 42, 43, and 44

Regulation Package #0800-17

Effective 1/8/01

Sections 42-205, 43-119, 44-133, and 44-353

Page(s)

Federal law has changed with regard to alien eligibility for cash aid benefits. Immigration authorities often require that family based immigrants be sponsored when they enter the country to avoid the likelihood that the immigrant becomes a public charge. The sponsor's and the sponsor's spouse's income is attributed to the alien when determining eligibility for cash aid. Effective December 19, 1997, a new enforceable affidavit of support (I-864) was instituted under INA Section 213A (8 CFR 213a.2). As a result, federal deeming law was changed to provide that with certain exceptions, until a noncitizen is naturalized, all income and resources of the sponsor and the sponsor's spouse shall be considered in the determination of eligibility for sponsored noncitizens requesting assistance under federal or state meanstested programs. The household size is determined by including all individuals, including the sponsored noncitizen, for which the sponsor is responsible. The income deductions allowed under the previous law are no longer applicable. These proposed regulations implement and make specific the requirements of 8 U.S.C. 183a and 8 U.S.C. 1631, as enacted in PRWORA and IIRIRA. State agencies can follow the collection procedures for reimbursement of aid received by a sponsored noncitizen prescribed in INS regulations at 8 CFR 213a.4.

In addition, the new federal law specifies that a 12-month exception to the deeming requirement may be applied to an indigent noncitizen who would, except for aid, be homeless and hungry and to a battered noncitizen who (or whose children or parent) has been subjected to battery or extreme cruelty in the U.S. The exceptions to the deeming requirements for the battered noncitizen family may be extended beyond the 12-month limit if abuse has been recognized by an order of a judge, Administrative Law Judge, or by a prior determination of the Immigration and Naturalization Service.

These regulations were adopted on an emergency basis and were considered at the Department's public hearing held February 20, 2001.

FILING INSTRUCTIONS

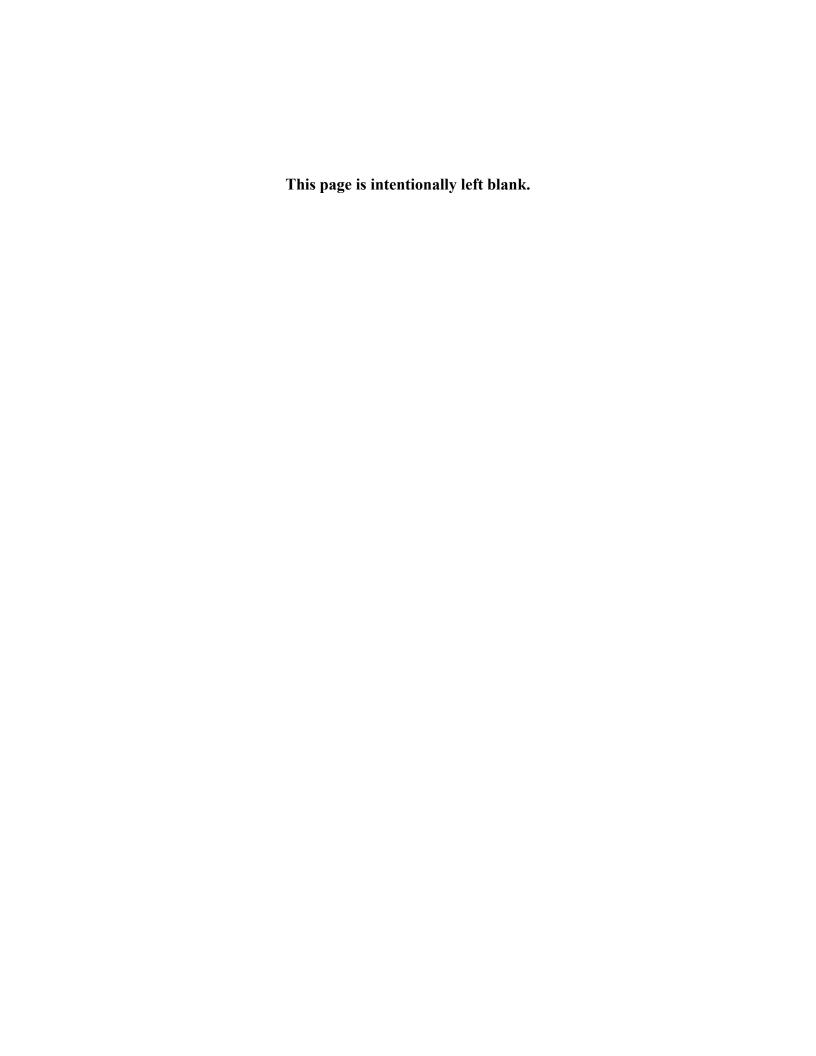
Revisions to all manuals are shown in graphic screen. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing EAS changes was EAS-00-12.

<u>1 age(3)</u>	replace(3)
170 and 171	Pages 170 and 171
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Attachment

JTP



42-205 DETERMINING OWNERSHIP OF REAL AND PERSONAL PROPERTY 42-205

.1 Declaration of Property Ownership

The applicant's declaration of the property he and/or his spouse own is considered sufficient proof of property ownership unless there is information indicating probable ownership of property other than that declared. In the presence of such information, the facts as to ownership must be determined from appropriate records, such as recorder's records, bank deposits and withdrawals and/or through affidavits of the applicant or recipient and other individuals concerned.

.2 Title Shared with Others

There is a presumption that those who share title have equal rights to possession, control and use of the property but the presumption may be refuted by evidence to the contrary. The source and amount of funds invested in the property or the facts around the inheritance, if it was acquired in this way, must be determined in order to arrive at the share which the applicant or recipient and/or his spouse actually owns.

.3 Community Property

Each spouse is presumed to own a one-half interest in community property, regardless of which spouse holds the property. All property held in the name of the spouse of a married person is presumed to be community property unless evidence establishes it to be separate property. Exception: Burial trusts and interment plots are considered the separate property of the spouse who is to be the beneficiary or user.

.4 Child Lives with Mother and Stepfather

When a child lives with his mother and stepfather, each spouse is presumed to own a one-half interest in property held by either spouse, unless this presumption is refuted by evidence which established it to be the separate property of one spouse.

.5 Sponsored Noncitizens

For purposes of this section, "sponsored noncitizen" applies to noncitizens who are sponsored by an individual(s) (see Section 43-119.2).

.51 The resources of the noncitizen's sponsor and the resources of the sponsor's spouse who lives with the sponsor as provided in Section 43-119.22, shall be deemed to be the sponsored noncitizen's resources.

PROPERTY Regulations 42-205 (Cont.)

- 42-205 DETERMINING OWNERSHIP OF REAL AND PERSONAL PROPERTY 42-205 (Continued)
 - .52 Determine the total value of real and personal property of the sponsor and the sponsor's spouse as if they were applying for aid (for real property, see Section 42-215.1; for personal property and vehicles, see Food Stamp regulations at Manual of Policies and Procedures Section 63-501.5);
 - If a person is the sponsor of more than one noncitizen, divide the amount determined in Section 42-205.52 above by the number of sponsored noncitizens receiving CalWORKs cash aid, including the number of sponsored noncitizens in the applicant's AU. This amount shall be deemed to be the resources of each applicant or recipient who is a sponsored noncitizen. If the deemed resources alone or in combination with other property of the AU exceed the property limits described in Section 42-207, ineligibility results, but only for the sponsored noncitizen(s).
 - These resources shall not be considered as the resources of other applicants or recipients in the family who are not sponsored noncitizens, unless such resources are actually available to these other persons, e.g., the sponsor establishes a trust fund that is available to meet the current needs of the family.
- Repealed by Manual Letter No. EAS-98-03, effective 7/1/98. .6

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553, 10554, 11008.135, 11155, 11155.1, 11155.2, and 11257, Welfare and Institutions Code; and 8 U.S.C. 1631(a).

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43-109 REQUIRED FINANCIAL CONTRIBUTION - UNRELATED ADULT MALE 43-109 (Continued)

See Section 43-107.54 for action to be taken if the unrelated adult male refuses to sign a statement regarding his contribution to the family.

NOTE: Authority cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code. Reference: Sections 10553, 10554, and 10604, Welfare and Institutions Code.

43-117 NOTIFICATION TO SUPERIOR COURT

43-117

In all cases when aid has been supplied for or granted to a child of parents who are involved in a divorce, the county welfare department shall notify the superior court in accordance with W&I Code Section 11485. The notice shall contain any information known by the welfare department concerning financial resources of the parents which might be applied to child support. Form CA 321 may be used for this purpose. If the court becomes aware that children may be receiving aid or that an application may be made when a divorce or separate maintenance action has been filed, the court is required by W&IC Section 11485 to notify both the district attorney and the county welfare department of pending action. Form CA 322 is available for this purpose. In such cases, the county should reply on Form CA 321.

43-119 SPONSORED NONCITIZENS

43-119

- .1 Sponsored Noncitizen Definition
 - .11 Repealed by Manual Letter No. EAS-91-14, effective 10/1/91.
 - .12 The provisions of Sections 43-119.2 and .3 do not apply if the noncitizen is:
 - Admitted to the United States as a result of the application of the provisions of Section 203(a)(7) (in effect prior to April 1, 1980) of the Immigration and Naturalization Act;
 - .122 Admitted to the United States as a result of the application of the provisions of Section 207(c) (in effect after March 31, 1980) of the Immigration and Naturalization Act;
 - .123 Paroled into the United States as a refugee under Section 212(d)(5) of the Immigration and Naturalization Act;
 - .124 Granted political asylum by the Attorney General under Section 208 of the Immigration and Naturalization Act;

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- .125 A Cuban or Haitian entrant, as defined in Section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96-422).
- .126 A sponsored noncitizen that entered the country with an I-134 Affidavit of Support.
- .2 Individual Sponsors
 - .21 The provisions of Section 43-119.2 apply only to noncitizens:
 - .211 Who are sponsored by individuals; and
 - .212 Who are not exempt under Section 43-119.12; and
 - .213 Until such time as the noncitizen:
 - (a) Achieves United States citizenship through naturalization pursuant to the Immigration and Nationality Act (8 U.S.C. 1421 et seq.); or
 - (b) Has worked 40 qualifying quarters of coverage under Title II of the Social Security Act (42 U.S.C. 401 et seq.) or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, and
 - (1) In the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any federal means-tested public benefit, as provided under 8 U.S.C. 1631, during any such period.
 - (c) Leaves the country permanently; or
 - (d) The sponsor or noncitizen dies.
 - All the income and resources of the sponsor who is not receiving CalWORKs, SSI or other public cash assistance payments (such as General Assistance) and the income and resources of the sponsor's spouse who lives with him/her and who is not receiving such public assistance payments shall be deemed to be the income and resources of the sponsored noncitizen. See Section 44-133.7 for the determination of the amount of this income, and Section 42-205.5 for the determination of the amount of resources. The following are exceptions to the deeming provisions:
 - .221 If a determination is made by the county that a sponsored noncitizen would go hungry and homeless without aid, the sponsored noncitizen is determined to be indigent. The exceptions to the deeming provisions that are permitted for indigence are as follows:

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- (a) In these cases, the amount of income and resources of the sponsor or the sponsor's spouse that is attributed to the sponsored noncitizen shall not exceed the amount actually provided.
- (b) This exception applies for a period beginning on the date of such determination and ending 12 months from that date.

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(c) When a sponsored noncitizen is unable to provide the necessary information regarding their sponsor and the county can not establish contact with the sponsor and it is determined the sponsored noncitizen would go hungry and homeless without aid, the sponsored noncitizen is ruled indigent.

HANDBOOK ENDS HERE

- .222 For a 12-month period, the noncitizen shall be exempt from this deeming provision if:
 - (a) In the case of an abused noncitizen or an abused parent of a noncitizen child:

The noncitizen or parent demonstrates that he/she has been battered or subjected to extreme cruelty in the United States by a spouse or a parent; or by a member of the spouse or parent's family who are residing in the same home as the noncitizen, and the spouse or parent consented to or acquiesced to such battery or cruelty.

(b) In the case of a noncitizen whose child is abused:

The noncitizen child has been battered or subjected to extreme cruelty in the United States by the spouse or parent or family members of the noncitizen (without the active participation of the noncitizen in the battery or cruelty).

- (c) After a 12-month period, the exception to the provision under Section 43-119.222 continues regarding the batterer's income and resources only, if the noncitizen demonstrates that such battery or cruelty has been recognized in an order of a judge or administrative law judge or a prior determination of the Immigration and Naturalization Service.
- .223 For the application of Section 43-119.222, there must exist, in the opinion of the county providing aid, a substantial connection between the battery or extreme cruelty and the need for the aid.

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- Section 43-119.222 shall not apply to aid for a noncitizen during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual who was subjected to such battery or cruelty.
- .23 As a condition of eligibility, the sponsored noncitizen has the following responsibilities:
 - .231 To provide upon county request, information and documentation concerning his/her sponsor which may be necessary to make the determination under Section 44-133.7 and Section 42-205.5; and information and documentation which the noncitizen and his/her sponsor provided in support of the noncitizen's immigration application.
 - .232 To obtain the cooperation from his/her sponsor which is necessary to make the determination under Section 44-133.10 and Section 42-205.5.
 - .233 To comply with reporting requirements specified in Section 40-181.25.
- In the event of the death of a noncitizen's sponsor(s), verification of death(s) shall be required only when the information reported is questionable. In the absence of evidence to the contrary, the sponsored noncitizen's statement under penalty of perjury is to be accepted and the sponsored noncitizen provisions shall no longer apply.

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.3 Guidance Issued by the U. S. Attorney General for Determination of Substantial Connection Between Battery/Cruelty and Need for Aid (62 FR 65285) paraphrased to relate to the CalWORKs program.

Below is a list of examples to assist counties in making substantial connection determinations between battery or extreme cruelty and the need for the aid.

.31 When aid is needed to enable the applicant, the applicant's child, and/or (in the case of a noncitizen child) the applicant's parent to become self-sufficient following separation from the abuser.

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- .32 When aid is needed to enable the applicant, the applicant's child, and/or (in the case of a noncitizen child) the applicant's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the applicant, the applicant's child, or the applicant parent from the abuser.
- .33 When aid is needed due to a loss of financial support resulting from the applicant's, his or her child's, and/or his or her parent's separation from the abuser.
- .34 When aid is needed because as the result of battery or extreme cruelty, the applicant loses his/her job, earns less, or is required to leave his or her job for safety reasons. Results of battery/extreme cruelty include: separation from the abuser, work absences, lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating to it (child support, child custody, and divorce actions).
- .35 When aid is needed because the applicant, applicant's child or parent of noncitizen child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.
- .36 When aid is needed because the loss of a dwelling or source of income or fear of the abuser following separation jeopardizes the applicant or parent of the noncitizen child to care for his or her children. (This includes the inability to house, feed, or clothe the children or to put the children into a day care for fear of being found by the abuser.)
- .37 When aid is needed to alleviate nutritional risks or need resulting from the abuse or following separation from the abuser.
- When aid is needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with the applicant, the applicant's child, and/or the parent of the noncitizen child; and/or to care for the resulting children.
- When medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant had when living with the abuser.

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NOTE: Authority cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code. Reference: Sections 10553, 10554, 10604, 11008.13, and 11008.135, Welfare and Institutions Code; 8 U.S.C. 1183a; 8 U.S.C. 1421 et seq.; 8 U.S.C. 1631; 8 U.S.C. 1641(c); 8 U.S.C. 1645; 42 U.S.C. 401 et seq.; 8 CFR 213a.2(e)(1); and 62 FR 61344, 61370.

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44-133 TREATMENT OF INCOME -- CALWORKS (Continued)

44-133

.6 Income of a Nonneedy Caretaker Relative Other than the Parent

Regulations

- .61 The amount by which a nonneedy relative, other than a parent with whom the child lives, is able and willing to meet the child's needs is income to the Assistance Unit.
- .7 Income in Cases Where a Noncitizen Has Been Sponsored for Entry into the United States
 - .71 When a noncitizen is sponsored by an individual as defined in Section 43-119.2 the income of his/her sponsor who is not receiving cash aid, SSI or other public cash assistance payments (such as General Assistance) and the income of the sponsor's spouse who lives with the sponsor and who is not receiving such public cash assistance payments shall be deemed to be the sponsored noncitizen's income. This income is determined as follows:
 - .711 Determine the total amount of unearned income of the sponsor and his/her spouse.
 - Determine the total amount of income received by the sponsor and his/her spouse, such as wages or salary, or as net earnings from self-employment. See Section 44-113.212.

44-133 TREATMENT OF INCOME -- CALWORKS (Continued)

44-133

- .713 If the sponsor is the sponsor of more than one noncitizen, divide the total gross income by the total number of sponsored noncitizens who are applying for or receiving cash aid. This amount shall be deemed to be the income of each applicant or recipient who is a sponsored noncitizen.
- .714 When the sponsored noncitizen is not included in the AU (see Section 82-832), the portion of his/her income, which has been deemed from the sponsor, shall not be used in determining his/her contribution to the AU unless such income is actually available to the AU.
- When the sponsored noncitizen is a member of the AU, this deemed income from the sponsor shall be treated as unearned income in accordance with Sections 44-113 and 44-315.4.
- .716 If the sponsor is either an excluded parent or stepparent, his/her income shall be treated in accordance with the excluded parent or stepparent deeming computation. See Sections 44-133.3 and 44-133.63.
- .72 When an alien is sponsored by an agency or organization as defined in Section 43-119.3 and the sponsoring agency or organization is unable to meet all of the needs of the alien (Section 43-119.3), income from the sponsoring agency or organization shall be treated as net nonexempt income to the sponsored alien.

STANDARDS OF ASSISTANCE INCOME 44-133

44-133 TREATMENT OF INCOME -- CALWORKS (Continued)

Regulations

44-133

NOTE: Authority cited: Sections 10553, 10554, 10604, and 11369, Welfare and Institutions Code. Reference: Sections 10063, 10553, 10554, 10604, 11008.14, 11254, 11450, 11452, 11453, 11486, 18937, 18940, and 11371, Welfare and Institutions Code; 45 CFR 205.50(a)(1)(i)(A); 45 CFR 233.20(a)(1)(i); 45 CFR 233.20(a)(3)(ii)(C), (a)(3)(vi)(B), (a)(3)(xiv), (a)(3)(xiv)(B), and (xviii); 45 CFR 233.50(A)(c); and 45 CFR 233.90(c)(2)(i); Family Support Administration Action Transmittal 91-15 (FSA-AT-91-15), dated April 23, 1991; and Omnibus Budget Reconciliation Act (OBRA) of 1990; U.S. Department of Health and Human Services Federal Action Transmittal No. FSA-AT-91-4 dated February 25, 1991; Simpson v. Hegstrom, 873 F.2d 1294 (1989); Ortega v. Anderson, Case No. 746632-0 (Alameda Superior Court) July 11, 1995; and Federal Register, Vol. 58, No. 182, pages 49218 - 20, dated September 22, 1993; 8 U.S.C. 1631; and 42 U.S.C. 602(a)(39).

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44-352 OVERPAYMENT RECOUPMENT (Continued)

44-352

- .44 Civil Judgment
 - .441 If the recipient or an individual no longer receiving aid refuses or is unable to repay the amount demanded, the county shall refer the case to the appropriate county official for action on a civil judgment, unless specifically exempted under MPP 44-352.2.
 - (a) An abstract of civil judgment shall be recorded pursuant to Section 674, Code of Civil Procedure, in any county in which the recipient or former recipient owns real property.
 - (b) If a recipient is ineligible for further aid due to current income, property or other factors affecting eligibility, the county shall take all appropriate action pursuant to Section 681, et seq., Code of Civil Procedure, to execute the judgment.

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(c) Except that if the recipients' sources of income include Social Security or SSI/SSP benefits, these benefits are exempt from collection and will not be used to repay an overpayment unless agreed to by the client.

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- .45 Nothing in .43 or .44 above shall preclude the county from arriving at a reasonable settlement of its demand for repayment with the recipient or former recipient.
- .46 Voluntary Cash Recovery See Section 44-351.1.
- .47 Voluntary Cash Offset See Section 44-351.2.
- .5 Referral to Special Investigative Unit (SIU).

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.51 Chapter 20-000 through 20-009 discusses referrals to the Special Investigative Unit and referrals to law enforcement officials. Chapter 20-350 discusses referrals made in cases of alleged IPV.

HANDBOOK ENDS HERE

.511 All overpayments determined to be caused by an applicant's or recipient's failure to report information shall be referred to the SIU, including overpayments caused by an alleged IPV.

44-352 OVERPAYMENT RECOUPMENT (Continued)

44-352

- .52 The Determination of Failure to Report.
 - .521 A failure to report occurs when the recipient has:
 - a. Made oral or written misstatements in response to oral or written questions from the county or state concerning his/ her income, resources or other circumstances which may affect the eligibility or grant amount; or
 - b. Failed to report changes in income, resources or other circumstances which may affect the amount of the grant; or
 - c. Failed to report receipt of a grant amount which he/she knew represented an erroneous payment.

NOTE: Authority cited: Sections 10553, 10554, and 11004(h), Welfare and Institutions Code. Reference: Sections 10553, 10554, 11004, 11008 (Ch. 270, Stats. 1997), 11017, 11155, 11155.1, 11155.2, 11257, 11450, 11451.5, 11452, 11453, and 11453.2, Welfare and Institutions Code; Darces v. Woods (1984) 35 Cal.3rd 871:201 Cal.Rptr. 807, and Ortega v. Anderson, Case No. 746632-0 (Alameda Superior Court) July 11, 1995.

44-353 OVERPAYMENTS TO SPONSORED ALIENS

44-353

Repealed by CDSS Manual Letter No. EAS-01-01, effective 1/8/01.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 11056 and 11008.13, Welfare and Institutions Code; 8 U.S.C. 1183a; and 8 CFR 213a.

STANDARDS OF ASSISTANCE
Regulations AID PAYMENTS 44-355 (Cont.)

44-355 MANDATORY INCLUSION OVERPAYMENT/UNDERPAYMENT 44-355

.1		datory Person - ence Unknown	The county shall complete the following when a person required to be included in the AU is discovered in the home.
	.11	Reinform AU	Upon discovery, reinform the AU in writing that the discovered person is required to be included on the appropriate Statement of Facts. The reinforming date is the date the reinforming notice is mailed.
	.12	Retroactive Period	The period beginning with the date the person was required to be included in the AU and ending with the date the AU was reinformed.
	.13	Redetermine Eligibility	Redetermine the eligibility of the AU for each month the person was required to be included in the AU but was not included.
		.131 Income/Resources	Include the person's income and resources.
		.132 Needs	Include the person's needs.
	.14	Recompute Grant	For the period specified in Section 44-355.12, recompute the grant for the AU.
		.141 Income	Include the person's income and resources.
		.142 Needs	Include the person's needs.
	.15	Recover Overpayment	Initiate recovery of an overpayment as specified in Section 44-352 for any month in which aid was overpaid.

STANDARDS OF ASSISTANCE		
44-355 (Cont.)	AID PAYMENTS	Regulations

44-355 MANDATORY INCLUSION OVERPAYMENT/UNDERPAYMENT 44-355 (Continued)

Correct an underpayment as specified in Section 44-340 for any month in which aid was underpaid. Payment shall be made only for months in which all technical conditions of eligibility, as defined in Section 44-317.112(a), are met. Technical conditions of eligibility are considered to be met as of the date the person who was required to be

included in the AU provided:

.161 Cooperates The person is cooperating in meeting those

conditions and

.162 Reporting The caretaker relative has fulfilled his/her reporting Responsibilities responsibilities with regard to making timely and

responsibilities with regard to making timely and accurate reports of AU composition in accordance

with Section 40-105.14.

.2 Current Eligibility Redetermine eligibility for the AU as of the date the

AU was reinformed in accordance with Section 44-355.11 that the additional person is required to be in the AU. Use the additional person's income, resources and needs when making this

redetermination.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Section 11056, Welfare and Institutions Code; 45 CFR 233.20(a)(13); and SSA-AT-86-01.

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.16

Correct Underpayment